UNITED STATES BANKRUPTCY COURT
EASTERN DISTRICT OF MICHIGAN
SOUTHERN DIVISION

In re:

Barbara Jean Pewitt,

Debtor.
_____/

Case No.: 16-46596
Chapter 13
Hon. Mark A. Randon

ORDER SUSTAINING THE TRUSTEE'S OBJECTION TO CONFIRMATION

Secured creditor, Seterus, Inc., is the mortgagee on Debtor's principal residence. Although the mortgage does not mature until June 1, 2029, Debtor's Chapter 13 plan proposes to voluntarily increase payments to Seterus–and pay off her loan in just 60 months–while essentially paying unsecured creditors nothing. The Trustee objects. She contends Debtor's plan is not proposed in good faith, because the increased payments are detrimental to the unsecured creditors, which would otherwise receive more than $13,000.00 over the life of the plan. The Court agrees and **SUSTAINS** the Trustee's objection to confirmation.

11 U.S.C. § 1325(a)(3) provides that the Court shall confirm a plan if it has been proposed in good faith. To determine if a plan is proposed in good faith, the Court analyzes 12 factors:

(1) the amount of the proposed payments and the amount of the debtor's surplus;

(2) the debtor's employment history, ability to earn and likelihood of future increase in income;

(3) the probable or expected duration of the plan;

(4) the accuracy of the plan's statements of the debts, expenses and percentage repayment of unsecured debt and whether any inaccuracies are an attempt to mislead the court;

(5) the extent of preferential treatment between classes of creditors;

(6) the extent to which secured claims are modified;

(7) the type of debt sought to be discharged and whether any such debt is nondischargeable in Chapter 7;

(8) the existence of special circumstances such as inordinate medical expenses;

(9) the frequency with which the debtor has sought relief under the Bankruptcy Reform Act;

(10) the motivation and sincerity of the debtor in seeking Chapter 13 relief;

(11) the burden which the plan's administration would place upon the trustee; and

(12) whether the debtor is attempting to abuse the spirit of the Bankruptcy Code.

Hardin v. Caldwell (In re Caldwell), 895 F.3d 1123, 1126-27 (6th Cir. 1990). "Good faith does not necessarily require substantial repayment of the unsecured claims." *Hardin v. Caldwell (In re Caldwell),* 851 F.2d 852, 859 (6th Cir. 1988).

Having considered all of the applicable factors, the Court concludes that Debtor's desire to voluntarily pre-pay her home loan–even given Seterus' favorable interest-payment concessions–(1) improperly uses Debtor's surplus funds to pay a secured creditor; (2) improperly prefers a secured creditor over all unsecured creditors; and (3) abuses the spirit of the Bankruptcy Code, which, in a Chapter 13, generally requires the orderly *pro rata* payment of

unsecured creditors from a debtor's disposable income.[1] The Trustee's objection is **SUSTAINED**.

IT IS ORDERED.

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Signed on November 09, 2016

/s/ Mark A. Randon
Mark A. Randon
United States Bankruptcy Judge

[1]Debtor's argument that the unsecured creditors would also receive nothing in a liquidation is unpersuasive: 11 U.S.C. § 1325(b)(1)(B) requires that–upon the Trustee's objection–"all of the debtor's projected disposable income to be received in the applicable commitment period beginning on the date that the first payment is due under the plan . . . be applied to make payments to *unsecured creditors* under the plan." (Emphasis added).